In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1338

CHENG HO MUI AND PAN YI PAN, PETITIONERS

v.

DOMINICK RINALDI, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioners are natives and citizens of China who fled from mainland China and arrived in the United States as crewmen in 1964 and 1965. After they overstayed the twenty-nine day period allowed for alien seamen, they were given deportation hearings and in April 1966 they were ordered to surrender themselves for deportation to Hong Kong.

The sole issue raised in this case concerns the propriety of the District Director's denial of petitioners' applications for classification as refugees and the

granting of seventh-preference status under Section 203(a)(7) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1153(a)(7). That section provides that, subject to numerical limits, conditional entries into the United States shall be made available "by the Attorney General, pursuant to such regulations as he may prescribe . . . to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country" that they are refugees within the meaning of the section. The Attorney General has issued regulations providing that "[p]ursuant to agreements entered into with the governments of the countries concerned, officers of the Service are authorized to accept applications and to examine the qualifications of applicants for conditional entry under section 203(a)(7) of the Act" only in seven specified nations in Europe (8 C.F.R. 235.9(a)). Petitioners, in challenging the validity of the regulations, argue that the statutory term "any non-Communist or non-Communist-dominated country" includes the United States, so that the District Director in New Jersey was required to adjudicate the applications for refugee status they filed while in this country. In the alternative, they contend that the Service is required to establish an office for the processing of such applications either in Hong Kong (where petitioners are to be deported) or in some country in the Far East.

2. As the court below noted, these same claims were considered and rejected in a thorough opinion by Judge Friendly which this Court declined to review. *Tai Mui* v. *Esperdy*, 371 F. 2d 772 (C.A. 2), certiorari

denied, 386 U.S. 1017. See also, *Wing Wa Lee* v. *Immigration and Naturalization Service*, 375 F. 2d 723 (C.A. 9), certiorari denied, 389 U.S. 856. The circuits are not in conflict, and as the opinion in *Tai Mui* (which is extentively quoted and relied upon by the court below) makes clear, the regulations promulgated by the Attorney General are in accord with the intent of Congress in enacting Section 203(a)(7). For the reasons set forth in that opinion and in the government's brief in opposition to the petition for a writ of certiorari (No. 1037, O.T. 1966), it is respectfully submitted that the present petition for a writ of certiorari should be denied.

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